

Question 1: Do you agree that the proposed changes make for a clearer set of rules that enable compliance to be achieved with a greater degree of certainty?:

On the whole, yes. The clarifications will prove very useful.

However, the mention of AMD is not useful. In fact, it has the opposite effect and makes the position more opaque. The primary concern is that it enforces the position that AMD has been considered and is legal to use.

Section 1.21.3 discusses the differences in opinion on AMD. One of the reasons for this is that a wide variety of techniques are used. As one of the few people who has implemented many different dialler systems I have seen this first hand. I have experienced technologies that work nearly acceptably, and some that are atrocious. Reported effectiveness also varies because some suppliers lie. This is known because no amount of tuning can make their AMD successful even with straightforward examples of AM's.

Another, but more important reason is because there are several variables which impact the number of AM's which will be connected, and subsequently the successfulness of detection. Some of these are:

- * Quality of data (age or source)
- * Time of call
- * Type of call (People who know they owe money don't seem to be as happy to answer their phone).
- * Destination of call

For this reason it would be impracticable to have a one size fits all percentage for AMD failure rates.

However, it should be considered that most AMD failure rates are quite high, and in any campaign with a relatively average number of AM's to be detected then this failure rate would more than account for the allowed 3%. It would therefore seem sensible to outlaw AMD. However, OFCOM do not have the authority to do this and it would then mean that better, successful AMD could not be used in the future.

The only acceptable solution is that OFCOM should not promote the use of AMD in any way and should discourage it's use, but make it clear that if innovative technology can provide minimal failure rates (less than .5%) then they would be approved.

Question 2: Do you agree with Ofcom's approach to determining whether the use of automated messages constitutes misuse?:

No. Ofcom have misunderstood their powers and responsibility in this instance.

Ofcom are in danger of moving outside of the spirit of the legislation. This legislation was intended to prevent people from abusing electronic networks, but Ofcom wish to apply it to any practice which they do not approve of. Ofcom does not have the relevant authority to do this.

The comment that "persistent use of automated calling systems to transmit recorded messages that are not marketing messages....is persistent misuse" is an example of this. These messages may be persistent, but they are not misuse by the spirit of the law. OFCOM may not like this, but they should refer this issue to the relevant, elected, law making authority should they require further powers.

The primary test of annoyance, inconvenience or anxiety has been generally accepted but is not foolproof. If the tax office chase my return it is annoying because I already know, an inconvenience because I am busy and the threat of fines makes me anxious. This does not mean they are misusing the telephone network. This example can very easily be applied to debt collection calls - automated or not.

Question 3: Do you believe that it is possible to define objective criteria for applying the public interest test.:

No - public interest varies according to individual and the case in point. What I would find of interest, you may not.

This means that subjective criteria must be used and a decision made by a suitable independent and qualified authority.

Question 4:Do you believe that outbound call steering should only be used with customers who have given their prior consent?:

No, but it should never be used for marketing purposes.

This practice does not scare consumers, and they are more than welcome to hang up the phone.

Question 5: Do you agree with Ofcom's clarification that the exploitation of all types of revenue-sharing numbers represents a form of misuse?:

Yes. This is strongly welcomed because the clarification allows a wider range of CLI's to be used - including mobile numbers generated by the legal use of GSM gateways.

Comments:

The further clarification on all points is welcomed. However, Ofcom is very close to overstepping it's authority in many areas. If there is a wish, as it would seem, for more powers to regulate calling then further legislation must be sought from parliament. This point cannot be over-emphasized